

REMARKS

In the Official Action, the Examiner rejects claims 55-57 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,814,016 to Valley et al. (hereinafter "Valley"). Furthermore, the Examiner rejects claim 58 under 35 U.S.C. § 103(a) as being unpatentable over Valley in view of U.S. Patent No. 5,759,170 to Peters (hereinafter "Peters"). In response, Applicants respectfully traverse the Examiner's rejections under 35 U.S.C. § 103(a) for at least the reasons set forth below.

Applicants respectfully submit that Valley is not effective against the instant application in a rejection under 103(a). The filing of the instant application antedates the issuance and publication of Valley. Therefore, Valley is prior art only under one or more of subsection 102(e), (f), and (g). Under 35 USC §103(c), as amended:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

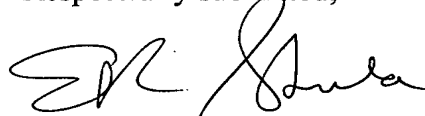
According to the *Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. 103(c)*, 1241 OG 96 (Dec 26, 2000), the statement of an attorney or agent of record asserting common ownership at time the instant invention was made is sufficient evidence to disqualify the reference (see, section III, *Modified Policy on Evidence to Establish Common Ownership or an Obligation for Assignment to the Same Person*).

Applicant hereby states that both the instant application and U.S. Patent No. 5,814,016 to Valley et al. were, at the time the invention of the instant application was made, owned by or subject to an obligation of assignment to Heartport, Inc.

In light of the foregoing, Applicant respectfully requests that the rejection of claims 55-58 be withdrawn.

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



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DATE: September 20, 2001
Docket No. HRT-194